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*Composite Text of all USG
Comments except 1st to 11th*

Draft Instrument on Forced Disappearances/US Proposed Text

GEI75

Article 1.

"For purposes of this instrument, an enforced disappearance is considered to be an arrest, detention or abduction of a person by, or with the authorization, support or acquiescence of, a State, followed by its refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of such person, with the intention of removing that person from the protection of the law for a prolonged period of time."

...engaging in conduct that is for the purpose of removing

Article 2.

Article 2(1): Replace current 2(1) and 3(1)(a)-(c) with the following text:

"Each State Party shall take the necessary measures to ensure that the acts which comprise an enforced disappearance, for purposes of this instrument, constitute a punishable offense or offenses under its criminal law [or alternatively: is subject to criminal sanction under its criminal law]. The same shall apply to an attempt to commit an enforced disappearance and to an act that constitutes complicity or participation in, or a conspiracy to commit, an enforced disappearance."

Article 2bis.

"States Parties shall take all feasible measures to prohibit and criminalize the acts described in Article 1 when committed by private organizations, groups or individuals."

Article 4. Add new Article 4(3):

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“Mitigating and aggravating circumstances shall also be permitted as provided under the domestic law of a State Party unless inconsistent with the object and purposes of this instrument.”

Article 9. Replace Article 9(1)© and Article 9(1)(d) with the following.

“In addition, each State party may take the necessary measures to establish jurisdiction in respect of an enforced disappearance in the following instances:

- (a) when the disappeared person is one of its nationals;**
- (b) when the alleged perpetrator of the offense is present in a territory under its jurisdiction, unless the State extradites the alleged perpetrator, or transfers him or her to an international tribunal.”**

Article 10(3). Preference is to *delete* Article 10(3).

Otherwise reword as follows:

“ Any foreign national held in custody pursuant to paragraph one may communicate with an appropriate representative of the State of which he or she is a national in accordance with applicable international legal obligations.”

Article 11.

Article 11(3): Substitute “duly constituted under law” for “of general jurisdiction,” so that the provision reads as follows.

“Any person alleged to have committed an enforced disappearance shall be tried in a court duly constituted under law which offers guarantees of competence, independence and impartiality and respect for a fair trial.”

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Article 12.

Article 12 *passim*. Change competent "authority" to "domestic authorities."

Article 12(3): Add at end of chapeau:

" , in accordance its domestic law":

Article 12(6): Reword as follows: "Each party shall endeavor to take the necessary measures to prevent or punish acts intended to hinder an investigation."

Article 13(6) and 14(2): Add after "refuse": "or condition".

Article 15.

Add to Article 15(1) and 15(2) after "assistance":

"in appropriate cases."

Chapter 6 should read "Prevention" not "Presentation."

Article 16.

Article 16(1)(d): Add at end of chapeau: "in accordance with the Constitution of the State Party":

Article 19.

Article 19(a): Add "knowing" before "delay."

Article 19(b): Add "knowing" before "Failure."

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Article 20.

The United States delegation proposes either the current text or a text that incorporates beneficiaries of training, other than law enforcement personnel, who are referred to in CAT Article 10 (i.e. civil or military, medical personnel, public officials and other persons who may become involved in a situation of enforced disappearance).

Article 21.

Reword text to track CAT Article 3, as follows:

“1. No State Party shall expel, return (*“refouler”*) or extradite a person to another State where there are substantial grounds for believing that he or she would be in danger of being subject to an enforced disappearance.

2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.”

Article III-E and III-F.

Article III-E (Non-derogation) may be acceptable provided that Article III-F (Operation of IHL) is clarified, to read as follows:

“Nothing in this instrument shall other others rights, obligations and responsibilities of States and individuals under international law, in particular the purposes of the Charter of the United Nations, international humanitarian law and other relevant conventions.”